

(2) Notwithstanding the provisions of this paragraph (c), matters which have been announced for Commission consideration may be deleted, or continued in whole or in part to the next scheduled Commission meeting, without notice.

(d) *Notice of meetings closed pursuant to special procedure.* In the case of meetings closed pursuant to the special procedures set forth in § 200.405, the Commission shall make publicly available, in whole or in summary form,

(1) A brief description of the general subject matter considered or to be considered, and

(2) The date, place, and approximate time at which the Commission will, or did, consider the matter. The announcement described in this subsection shall be made publicly available at the earliest practicable time, and may be combined, in whole or in part, with the announcement described in paragraph (a).

NOTE: The Commission intends, to the extent convenient, to adhere to the following schedule in organizing its weekly agenda: Closed meetings to consider matters concerning the enforcement of the federal securities laws and the conduct of related investigations will generally be held on Tuesdays and on Thursday afternoons. An open meeting will generally be held each Thursday morning to consider matters of any appropriate nature. On Wednesdays, either open or closed meetings, or both, will generally be held according to the requirements of the Commission's agenda for the week in question. Normally, no meetings will be scheduled on Mondays, Fridays, Saturdays, Sundays, or legal holidays.

The foregoing tentative general schedule is set forth for the guidance of the public, but is not, in any event, binding upon the Commission. In every case, the scheduling of Commission meetings shall be determined by the demands of Commission business, consistent with the requirements of this subpart I. When feasible, the Commission will endeavor to announce the subject matter of all then-contemplated open meetings during a particular month at least one week prior to the commencement of that month.

When and if convenient after the conclusion of a closed Commission meeting, the Commission will endeavor to make publicly available a notice describing (subject to the provision in § 200.402(d) regarding nonpublic matter in announcements) the items considered at that meeting and any action taken thereon.

#### § 200.404 General procedure for determination to close meeting.

(a) *Action to close meeting.* Action to close a meeting pursuant to § 200.402(a) or (c) shall be taken only upon a vote of a majority of the entire membership of the Commission. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 200.402(a), or with respect to any information which is proposed to be withheld under § 200.402(d); *Provided, however,* That a single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed, or with respect to any information concerning such series of meetings, so long as each meeting in such series relates to the same matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Announcement of action to close meeting.* Within one day of any vote pursuant to paragraph (a) of this section or § 200.409(a) (relating to review of Commission determinations to open a meeting), the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission on the question; and

(2) In the case of a meeting or portion thereof to be closed to the public, a written explanation of the Commission's action closing the meeting or a portion thereof, together with a list describing generically or specifically the persons expected to attend the meeting and their affiliation; and

(3) For every closed meeting, the certification executed by the Commission's General Counsel as described in § 200.406.

#### § 200.405 Special procedure for determination to close meeting.

(a) *Finding.* Based, in part, on a review of several months of its meetings, as well as the legislative history of the Sunshine Act, the Commission finds that a majority of its meetings may

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properly be closed to the public pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof.

(b) *Action to close meeting.* The Commission may, by recorded vote of a majority of its members at the commencement of any meeting or portion thereof, determine to close any meeting or a portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof. The procedure described in this rule may be utilized notwithstanding the fact that a meeting or portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof, could also be closed pursuant to § 200.402(a) (1), (2), (3), (5), (6), (7), or (9)(ii), or any combination thereof.

(c) *Announcement of action to close meeting.* In the case of a meeting or a portion of a meeting closed pursuant to this rule, as soon as practicable the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission to close the meeting; and

(2) The certification described in § 200.406, executed by the Commission's General Counsel.

### § 200.406 Certification by the General Counsel.

For every Commission meeting closed pursuant to § 200.402(a) (1) through (10), the General Counsel of the Commission (or, in his or her absence, the attorney designated by General Counsel pursuant to § 200.21) shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

### § 200.407 Transcripts, minutes, and other documents concerning closed Commission meetings.

(a) *Record of closed meetings.* Except as provided in § 200.407(b), the Commission's Secretary shall prepare a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting, or closed portion of a meeting.

(b) *Minutes of closed meetings.* In the case of a meeting, or portion of a meet-

ing, closed to the public pursuant to § 200.402(a) (8), (9)(i), or (10), the Secretary may, in his or her discretion or at the direction of the Commission, prepare either the transcript or recording described in § 200.407(a), or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each participating Commission member on the question). All documents specifically considered by the Commission in connection with any action shall be identified in such minutes are maintained.

(c) *Retention of certificate and statement.* The Secretary shall retain a copy of every certification executed by the General Counsel pursuant to § 200.406, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) *Minute Record.* Nothing herein shall affect the provisions of §§ 200.13a and 200.40 requiring the Secretary to prepare and maintain a Minute Record reflecting the official actions of the Commission.

### § 200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within twenty days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission's Freedom of Information Act Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission's Public Reference Room, the transcript, electronic recording, or minutes (as required by § 200.407 (a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under § 200.402 or otherwise. Copies of such transcript, or minutes, or a transcription of such recording disclosing